

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Lifeline and Link Up Reform and) WC Docket No. 11-42
Modernization)

WAIVER ORDER

Adopted: April 1, 2013

Released: April 1, 2013

By the Chief, Wireline Competition Bureau:

1. In this order, we grant a petition filed by the Public Utility Commission of Oregon and the Oregon Telecommunications Association (collectively, the OPUC), seeking extension of a temporary waiver of the Lifeline uniform eligibility criteria. We conclude that the waiver extension is necessary to give the state of Oregon sufficient time for its legislature to bring its law and rules into compliance with the Lifeline uniform eligibility criteria. The waiver granted will extend until the sooner of July 1, 2013, or the effective date of the required state statutory and regulatory changes.

2. In the Lifeline Reform Order, the Federal Communications Commission (FCC) established uniform eligibility requirements for all states. Prior to the Lifeline Reform Order, states that mandated state lifeline support were permitted to set the Lifeline eligibility criteria for residents of their states, provided that the criteria were based on income or on factors related to income. Oregon is one of the states which has a law governing the eligibility criteria for Lifeline. The Oregon state law, however, does not match the eligibility criteria provided for in the Commission's amended rules. Oregon currently

1 Petition for Extension of Waiver, Public Utility Commission of Oregon and Oregon Telecommunications Association, WC Docket Nos. 11-42 et al., CC Docket No. 96-45 (filed Mar. 13, 2013) (Oregon 2013 Petition); see also Petition for Waiver, Public Utility Commission of Oregon and Oregon Telecommunications Association, WC Docket Nos. 11-42 et al., CC Docket No. 96-45 (filed Apr. 19, 2012) (Oregon 2012 Petition). We previously granted the OPUC a waiver of the uniform eligibility criteria until April 1, 2013. See Lifeline and Link Up Reform and Modernization et al., WC Docket Nos. 11-42 et al., CC Docket No. 96-45, Waiver Order, 27 FCC Rcd 5941 (Wireline Comp. Bur. 2012) (Oregon Order). Pursuant to that order, the OPUC was required to file status reports regarding its progress in implementing legislation that would conform the state law to the FCC's uniform eligibility criteria. See id. at 5948, para. 16; see also Letter from John Cray, Program Manager, OPUC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-42 et al., CC Docket No. 96-45 (filed Mar. 1, 2013) (Oregon Status Report).

2 See Lifeline and Link Up Reform and Modernization et al., WC Docket Nos. 11-42 et al., CC Docket No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6685-87, paras. 66-68 (2012) (Lifeline Reform Order).

3 See 47 C.F.R. § 54.409 (2011).

4 See Oregon 2013 Petition at 2-3; Letter from Jon Cray, Program Manager, OPUC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., CC Docket No. 96-45, at 1 (filed May 8, 2012) (Oregon Ex Parte Letter).

5 See Oregon 2013 Petition at 2; Oregon Ex Parte Letter at 1.

administers its state program in conjunction with the federal Lifeline program and qualifies consumers for that program using the eligibility criteria established by its state statute.⁶

3. Until Oregon's state law establishing eligibility criteria for Lifeline is changed, the OPUC is unable to qualify consumers for Lifeline eligibility because certain qualifying programs covered by the FCC are not covered by Oregon's law.⁷ In the absence of a waiver, the OPUC states that eligibility determinations based on those programs outside of the state administrator's jurisdiction would have to be made by eligible telecommunications carriers (ETCs) providing the Lifeline service.⁸ The OPUC has argued that this bifurcated process would impose undue and unnecessary burdens on ETCs and consumers in Oregon, and would eliminate the benefits of a unified program administration.⁹

4. The uniform eligibility criteria for Lifeline became effective on June 1, 2012.¹⁰ In April 2012, the OPUC requested a waiver from these criteria.¹¹ The FCC granted a waiver from the rules until April 1, 2013.¹² Despite its good faith efforts and due to circumstances outside of its control, the OPUC argues that its state law may not be able to be changed to come into compliance with the uniform eligibility criteria by April 1, 2013.¹³ The OPUC explains that it sponsored a bill, introduced on the first day of the Oregon legislative session, which would make the necessary changes to the state law.¹⁴ The proposed legislation is still pending in the legislature but will not become law by April 1, 2013.¹⁵ Moreover, in order to implement the new law, the OPUC has implementation responsibility and contends it will be required to put in place new requirements upon passage of the legislation.¹⁶ The OPUC requests that the current waiver of the uniform eligibility criteria be extended until July 1, 2013.¹⁷

5. We find that there is good cause to grant an extension of the temporary waiver from the uniform eligibility requirements in Oregon until no later than July 1, 2013. The uniform eligibility criteria established in the *Lifeline Reform Order* are designed to create a baseline of eligibility for the federal program, to facilitate the establishment of an automatic means of checking for Lifeline eligibility and to reduce burdens on ETCs by standardizing eligibility across states.¹⁸ Extension of the temporary,

⁶ See Oregon 2013 Petition at 2; Oregon 2012 Petition at 2-3 (“The OPUC is responsible for developing the single OTAP and Lifeline application form, accepting and processing all Lifeline applications, and verifying the eligibility of each participant on both an initial and ongoing basis.”); Comments of Sprint Nextel Corporation, WC Docket Nos. 11-42 et al., CC Docket No. 96-45, at 5 (filed May 15, 2012) (describing Oregon's process for enrolling consumers in the Lifeline program using a state database administered by the state department of human services, which contains information on Oregon residents that receive benefits under the approved state qualifying programs).

⁷ See Oregon 2013 Petition at 2-3; Oregon Ex Parte Letter at 2 (“[S]tate statutes do not authorize the OPUC to serve or process Lifeline customers that do not meet Oregon criteria”).

⁸ See Oregon 2013 Petition at 2-3; Oregon Ex Parte Letter at 1-2.

⁹ See Oregon 2013 Petition at 4; Oregon Ex Parte Letter at 1.

¹⁰ See *Lifeline Reform Order*, 27 FCC Rcd at 6859-60, para. 515.

¹¹ See *supra* n.1.

¹² See *id.*

¹³ See Oregon 2013 Petition at 2-3; Oregon Status Report at 2.

¹⁴ See Oregon 2013 Petition at 3; Oregon Status Report at 1.

¹⁵ See Oregon 2013 Petition at 2-3; Oregon Status Report at 2.

¹⁶ See Letter from John Cray, Program Manager, OPUC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-42 et al., CC Docket No. 96-45 (filed Mar. 13, 2013).

¹⁷ See *id.*; Oregon 2013 Petition at 3; Oregon Status Report at 2.

¹⁸ See *Lifeline Reform Order*, 27 FCC Rcd at 6685-87, paras. 66-68.

limited waiver from the uniform eligibility criteria is consistent with these policies and is narrowly tailored to the particular circumstances in Oregon.¹⁹ The waiver that we grant herein, like the waiver the Bureau provided to the OPUC previously, will allow the OPUC to avoid creating a temporary, bifurcated process under which some subscribers are signed up through the state administrators and others through the ETCs.²⁰

6. Under the waiver we grant today, the state administrator in Oregon may continue to qualify Lifeline consumers under the qualifying criteria established in its state statute and is not required to use the eligibility criteria for the Lifeline program provided for in section 54.409(a) and (b) of the FCC's rules, as amended in the *Lifeline Reform Order*.²¹ The waiver will extend in Oregon until the sooner of July 1, 2013, or the effective date of state legislation and the state regulations necessary to bring the Oregon law and rules into compliance with the FCC's rules.

7. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, that the Petition for Extension of Waiver filed by the Public Utility Commission of Oregon and the Oregon Telecommunications Association is GRANTED to the extent described herein.

8. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, that section 54.409 of the FCC's rules, 47 C.F.R. § 54.409, IS WAIVED to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief
Wireline Competition Bureau

¹⁹ See *Oregon Order*, 27 FCC Rcd at 5947, para. 13.

²⁰ See *id.*, at 5947-48, para. 14; see also Oregon 2013 Petition at 2-3; Oregon 2012 Petition at 3.

²¹ See *Lifeline Reform Order*, 27 FCC Rcd at 6878, App. A (amending 47 C.F.R. § 54.409).